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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION ONE

In re A.W. et al., a Person Coming Under
the Juvenile Court Law.

MENDOCINO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,
CHILDREN & FAMILY SERVICES,

Plaintiff and Respondent,

v.

CLARENCE W. et al.,

Defendants and Appellants.

A146794

(Mendocino County
Super. Ct. Nos.
SCUK-JVSQ 14-15762,
SCUK-JVSQ 14-15763,
SCUK-JVSQ 14-15764,
SCUK-JVSQ 14-17027)

After appellants Clarence W. (father) and Nicole W. (mother) failed to reunify with their children, the juvenile court adopted a permanent plan of legal guardianship for them. Mother and father challenge the portion of the court's order that prohibited visitation between them and their children based on a finding that such visitation would be detrimental to the minors. Because substantial evidence supports the order, we affirm.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

Mother and father have three children (two older girls and a younger boy) together, and mother has an older son who is not related to father. Respondent

Mendocino County Health and Human Services Agency, Children and Family Services (Agency) has been involved with the family since at least August 2009. These current dependency proceedings began in June 2014 when the Agency filed a petition as to all four children alleging that mother had a current drug problem and had driven her children to an Agency office while under the influence of a controlled substance. Mother was also alleged to be homeless, and the children were reported to be dirty, disheveled, and hungry. Father was in a secure residential drug-treatment program that was ordered as a term of probation. The children were detained and placed in a foster home that was connected to the Indian tribes to which the children were either registered or were potential members. All four children remained in the same placement throughout the course of the proceedings.

At the jurisdiction hearing in July 2014, the juvenile court sustained allegations under Welfare and Institutions Code section 300, subdivision (b) (failure to protect),¹ including allegations that both parents had a history of chronic substance abuse; that father had previously been convicted of domestic violence, including one incident where he choked mother while their children were present in the home; and that the parents had an ongoing pattern of domestic violence between them. Mother was present at the hearing; father was not.

Both parents were incarcerated around the time of the disposition hearing held in September 2014. The juvenile court adjudged the minors dependent children, ordered reunification services for mother, but bypassed services to father because reunification services previously had been terminated as to him and because of his chronic substance abuse. Father appealed, arguing that the juvenile court erred by declining to order face-to-face visits with his children while he (father) was serving time in prison three hours from where the children lived. This court affirmed the visitation order in a nonpublished opinion, noting that father had no right to visitation since the juvenile court had not ordered reunification services for him. (*In re A.W.* (June 29, 2015, A143221).)

¹ All statutory references are to the Welfare and Institutions Code.

The children seemed “very comfortable” in their Native American placement. Mother struggled, however, in her efforts to reunify with them. Visitation between mother and the children began in October 2014, after she was released from jail. She entered a residential treatment program in November 2014, but she left the program the following month and was reported to be in denial about her addiction issues. Following her unexpected departure from the program, the Agency arranged weekly visitation beginning in early January 2015. She attended one visit but missed her scheduled January 12 visit because police found her in a vehicle with other intoxicated people (mother tested positive for methamphetamine and admitted she also had been drinking). The children were disappointed that mother did not appear for the visit, and mother was thereafter required to confirm her visits before her children were brought to the visitation center. She did so before two additional January visits, but she arrived 35 minutes late for the second visit and her children left before she arrived. At a visit on February 10, mother appeared to be under the influence of methamphetamine, and she did not comply with a drug screening after the visit. The Agency stated in a February 2015 review report that mother was important to the children and that it was clear she loved them, but that the children all experienced “increased anxiety after visits” with her. The Agency recommended that the juvenile court terminate mother’s reunification services. Later in February 2015, mother canceled a scheduled visit after she reported she was having an anxiety attack.

Around this time, mother’s two older children underwent a therapeutic assessment, and they were both found to be responsive to therapy. Mother’s oldest child showed signs of post-traumatic stress disorder and depression.

Before the six-month review hearing held in March 2015, the Agency acknowledged that mother had begun to take steps to maintain sobriety, and it changed its recommendation from termination of services to the provision of six additional months of services. The juvenile court adopted the revised recommendation, continued the minors as dependent children, and ordered weekly supervised visitation for a minimum of one

hour. The court further ordered that father, who was still in prison, continue to not have visitation because it would be detrimental to his children.

The Agency learned in late March that mother was involved with an inmate at the county jail who had a history of violence and drugs and whose infant son had died of head trauma, all of which led the Agency to conclude that the inmate was “totally unsuitable to be around [mother’s] children [after] he was released.” Mother agreed not to associate with the man, but she had 67 calls with him after she was advised to stop contacting him for the sake of her children, and she also associated with him after he was released from jail in April 2015. Mother and the boyfriend were arrested in early May, and mother faced drug and stolen-property charges.

As for visitation around this time, mother arrived late for some visits and occasionally struggled to keep track of all four children. The children were loving and affectionate with mother, and she arranged appropriate activities for them. The visits stopped, however, after her arrest.

The children were in a stable, loving, and supportive placement, but they sometimes “exhibit[ed] challenging behaviors,” including “misdirected anger.” The younger children had temper tantrums, the second oldest child acted out sexually, two of the children “struggle[d] with sneaky behaviors,” and all four children had trouble with their sleep (either nightmares or inability to sleep well). The youngest child was reported to have “ongoing destructive behaviors including but not limited to daily tantrums, throwing objects, and destroying items.”

By the time of the 12-month review hearing in July 2015, the Agency had concluded that mother had “failed” to comply with her reunification plan, and the Agency recommended that mother’s reunifications services be terminated. Father had been recently released from prison at the time of the review hearing, and the Agency recommended that he be permitted to write letters to his children that would “be processed in therapy when deemed appropriate and/or beneficial to them.” At this point in the proceedings, father had not visited with the minors in over a year.

Father was not present at the hearing, and his attorney stated she was “quite surprised” by his absence because they had spoken at length the day before and he (father) had said he would bring documentation to support a finding that he was “safe to visit” the children. Father’s counsel requested that father be permitted to have one visit with his children and that the Agency then further evaluate whether additional visits would be appropriate. The attorneys for the minors and the Agency, as well as tribal ICWA representatives, opposed in-person visitation with father. Mother’s attorney informed the court that mother planned to enter a six-month residential treatment program after she was released from custody the following month.

The juvenile court terminated mother’s reunification services. Regarding visitation, the court ordered that after mother was released from custody, she would have a minimum of one hour of supervised visitation per month. As for father, the court noted that the children were “exhibiting emotional distress and difficult behaviors,” concluded that beginning visitation with father would be detrimental to the children, and ordered that no visitation with father occur. The court then scheduled a selection-and-implementation hearing under section 366.26 for November 2015.

Despite the denial of visitation as to father, he showed up at the visitation center at the time of a late September visit between mother and the children and was there when the children arrived.² The foster mother saw father with his two older children on a couch and asked the social worker why he was permitted at the visit. Visitation staff asked father to leave, and he was cooperative about doing so. After father left, mother gave the children necklaces that she said their father had made, in violation of directions to father that the necklaces be given to the children only if their therapist determined it was appropriate.

After the late September visit, the children all showed signs of “emotional detriment to some degree” after seeing both their parents, including the following:

² Father later testified that he was present at the visitation center because he had arrived early for a class, and he did not realize his children were scheduled for a visit at that time.

- The oldest child's therapist reported that the child showed "some withdrawal symptoms" after seeing father, and the child generally struggled around this time coping with the fact that mother had been jailed. The child also told his foster mother that seeing his parents together "made him feel scared."
- The second oldest child told her therapist after the visit that "she had nightmares of a monster who wanted to marry her" and that she "did not want to marry the monster but he forced her to." The daughter, who was seven at the time, began having increased bowel accidents after she saw father. Her therapist also noted that the daughter was "more difficult to focus on a task and ha[d] a more manic affect in the past several weeks," including the time frame when she saw father.
- The third oldest child revealed in therapy after she saw her parents that she remembered her parents fighting and physically pushing each other, and she also remembered an argument over father "having slept with one of the girls." The daughter faced challenges regulating her emotions and suffered depressive and angry outbursts, and she became "noticeably violent," including scratching her sister on the face and digging her fingers into her foster sister's arm.
- The youngest child, who was nearly four at the time, wet the bed the night of the late September visit, and he later had a daytime accident, which was unusual for him. He generally suffered "severe emotional issues of anger which include tantrums," and these tantrums increased after he saw his parents in late September. He was in the early stages of therapy and was working on social issues at school, home, and in therapy.

Mother visited with the children again in late October. The children were "a little wild" at the beginning of the visit, and mother was "somewhat challenged to monitor the children but seemed to do her best to interact with all of them." The children hugged mother at the end of the visit and then "became very excited" when they saw their foster mother. Father joined mother in the parking lot after the visit, contrary to the Agency's

directives that he not be present when visits occur.³ Mother called to the children as they were driving away so the children could see father. The oldest child tried to roll down his window and began crying when he was told they would not stop. The foster mother reported that she saw changes when the children visited with mother and that she (the foster mother) found it upsetting when the children regressed.

The Agency recommended that the juvenile court order a guardianship for the children with their current caretakers. By contrast, terminating parental rights would interfere with the children's connection to their tribal communities and the children's rights to tribal membership, according to the Agency. Both of the relevant tribes supported the recommendation. As for visitation, the Agency recommended that no visitation be ordered for either parent, contending that the children faced "emotional risk" because of the inconsistency due to their parents' incarcerations and the parents not following visitation agreements. The Agency further stated that the visits "do not have a healthy [e]ffect on the children" and that the best way to help the children in "moving on with their lives" was to prohibit visitation.

At the contested selection-and-implementation hearing in November 2015, an expert on the Indian Child Welfare Act (ICWA) opined that continued custody of the children by the parents would result in serious emotional or physical damage to the children, and it "would be very detrimental for the children to always have to be going through this sort of situation." The social worker testified about the children's challenging behaviors following visits.

Father also testified at the hearing, stating that he wanted visitation with his children and that he missed them. He further testified that he had been attending weekly Alcoholics Anonymous meetings and that he hoped to enter a residential rehab program the following week. Mother was not present at the hearing because she was in a residential treatment program.

³ Father later testified that his presence in the parking lot was a coincidence, and he did not intend to violate the juvenile court's visitation order.

The juvenile court declined to terminate parental rights because it found that the minors were Indian children and termination of parental rights would substantially interfere with the minors' connection to their tribal community or the child's membership rights, and the minors' tribes had identified guardianship for the minors. (§ 366.26, subd. (c)(1)(B)(vi).) The juvenile court ordered a permanent plan of legal guardianship. The court also found by clear and convincing evidence that recent visitation had caused emotional detriment to the children and therefore ordered that no visitation be allowed under the guardianship. Dependency jurisdiction was terminated, and mother and father both appealed.

II. DISCUSSION

Mother and father both argue that insufficient evidence supports the finding that visitation with them after the establishment of guardianship would be detrimental. We are not persuaded.

Where, as here, the juvenile court orders legal guardianship as the permanent plan, “[t]he court shall also make an order for visitation with the parents . . . unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the child.” (§ 366.26, subd. (c)(4)(C); *In re Ethan J.* (2015) 236 Cal.App.4th 654, 660.) “Detriment is a familiar standard in child welfare determinations; but, as several courts have acknowledged, the notion of detriment is at best a nebulous standard *that depends on the context of the inquiry.*” (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1490, italics added.) We review a juvenile court’s finding of detriment for substantial evidence. (*In re A.J.* (2015) 239 Cal.App.4th 154, 160.)

There was substantial evidence here that all four minors were negatively impacted by their visit in late September when both parents were present and that visits with mother generally had negative effects on them. This evidence supported a finding that further visitation with the parents would be detrimental to the minors. This finding was made in the context of a permanency-planning hearing, when the focus is on permanence and stability for the minors. (§ 366.26, subd. (b).) Services had long since been

bypassed for father, and reunification services had been terminated for mother following multiple failed opportunities to reunify with her children as she struggled with substance abuse. In this context, and presented with this evidence, the juvenile court could correctly conclude that “it’s clearly in the children’s best interest to not have visitation for a while and to just be stable in this permanent situation here, this legal guardianship.”

In arguing to the contrary, mother and father both point to contrary evidence, such as a review report—prepared around nine months before the order appealed from—stating that “mother is important to the children.” We first observe that the same report also noted that “all the children have increased anxiety after visits and it would be sad if the visits were to be deemed a detriment to the children,” an outcome that came to pass after visitation continued to be a source of anxiety for the children. And while it is true, as mother emphasizes on appeal, that she had positive interactions with her children during visits in March and April 2015, visits stopped after she was thereafter incarcerated, and the inconsistency in visitation caused emotional harm to her children.⁴ It is settled that when reviewing an order for substantial evidence, it is irrelevant that there may be evidence in the record to support a contrary conclusion, so long as there is evidence from which a reasonable court could reach its conclusion, which there is here. (E.g., *In re K.B.* (2009) 173 Cal.App.4th 1275, 1292.)

Both mother and father acknowledge that the children suffered anxiety, but they argue that the Agency failed to establish a sufficient nexus between the minors’ emotional issues and their contact with their parents. We disagree. The Agency

⁴ Father makes several unsupported claims in his opening brief, such as that the children’s foster mother was “obviously biased,” that driving away from the visitation center after the oldest child saw father “border[ed] on the inhumane,” and that the minors were harmed “by the insensitive manner the children were being alienated from their parents and disallowed contact from even the most innocuous encounters.” These characterizations are unfounded, and we need not address them further. We also reject father’s insinuation that the social worker’s reports were somehow inherently unreliable or suspect or that the social worker was hiding information because she filed an addendum report to provide additional information about the late September visit. Equally strained is father’s accusation that the Agency used his children as “bargaining chips to ensure parental compliance and to interfere with fundamental parental rights.”

presented substantial evidence, including the testimony of an ICWA expert and the assigned social worker, connecting the children's challenging behaviors to contact with their parents.

Father also briefly raises two arguments for the first time on appeal. He claims that the Agency failed to satisfy its obligation to seek input from the children about visitation. (§ 366.26, subd. (h)(1) [“the court shall consider the wishes of the child and shall act in the best interests of the child”].) Next, he claims that no inquiry was made into whether the oldest child, who was permitted to attend if he or his attorney so requested or the court so ordered, had been properly notified of his right to attend. (§ 366.26, subd. (h)(2).) By not raising these issues in the juvenile court, father has forfeited them.

Finally, father further claims that “total deprivation of contact in this case virtually transformed the guardianships of these children into virtual adoptions, frustrating in spirit if not in form, the directives and wishes of the Tribes [involved in proceedings].” We agree with the Agency that should father's circumstances change and he can show that initiating visitation would be in his children's best interests, his remedy is to file a petition under section 388 in the juvenile court seeking visitation.

III. DISPOSITION

The juvenile court's November 12, 2015 order is affirmed.

Humes. P.J.

We concur:

Margulies, J.

Dondero, J,

In re A.W. (A147974)